

REMARKS

Claims 1-5 are pending. Claims 6-10 have been withdrawn. Applicant respectfully traverses the rejections in the outstanding Office Action, and submits that Claims 1-5 contain patentable material in view of the following comments. In order to distinctly distinguish over the prior art of record, Applicant has amended claim 1 to require increasing the throughput of a single clinical analyzer using reagents inventoried in at least two separate reagent servers within said single analyzer. Support for this amendment made be found in paragraphs [0016] and [0020] taken with Fig. 1. No new material has been added.

Claim Rejections – 35 USC §102

Claim 1 is rejected under 35 USC 102(b) as being anticipated by Bell (U. S. 5,679,309). Regarding Claim 1, the Examiner cites Bell for disclosing a method to increase analyzer throughput “using reagents inventoried in at least two servers. The issue at hand is whether Bell discloses one server (as suggested by Applicant) or whether Bell discloses two servers (as suggested by the Examiner).

Applicant has defined, from a patentability standpoint, a (reagent) server as comprising a storage area (for storing reagents), a tray (for holding reagent containers) and a shuttle (for moving reagent containers between the storage area and the tray).

The Examiner suggests that Bell discloses the combination of **30, 16 and 20** as a first reagent server. However, Bell's elements **30, 16 and 20** are a sample transfer station **30**, a sample sector **16** and a sample wheel **20** are (patient) sample handling elements and these do not comprise a reagent server as defined above.

Importantly, Claim 1 requires “duplicating reagents required to conduct a number of assays in the first pattern of assays within the at least two servers”. This requires that reagents be stored in both servers. In the instance of Bell, however, patient samples are stored in the sample sector and sample wheel, not reagents. Samples and reagents are inherently different and it cannot be said that either comprises the other.

Support for Applicant's belief that the combination of **30, 16 and 20** do not comprise a first reagent server follows:

1. Col. 5, lines 27-33 define **sample sector 16** as holding patient samples.
2. Col. 5, lines 38-48 define **sample wheel 20** as holding individual samples.
3. Col. 6, lines 35-42 define **sample transfer station 30** as transferring sample from sample wheel 20 to a test cuvette 24.
4. Col. 6, lines 30-31 distinguish between **sample wheel 20** and **reagent wheel 26**

MPEP 706.02 V requires that for an anticipation rejection under 35 U.S.C. 102(b) to be valid, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. Because Bell discloses only one single reagent server **46, 28 and 26**, it cannot be said that Bell anticipates Applicant's method for increasing the throughput of a clinical analyzer by duplicating reagents within at least two reagent servers as is required by Claim 1.

Furthermore, Bell does not inherently require that the features of Claim 1 be present to practice his invention since only the single reactant carousel **26** is needed. Applicant points out that if Bell's sample wheel **20** were a reagent wheel, as suggested by the Examiner, Bell's analyzer would be non-functional since there would be no provision within the analyzer for samples to be available for analysis.

Applicant therefore submits that the outstanding rejection under 35 USC 102(b) as being anticipated by Bell is improper and respectfully requests that the rejection of Claim 1 under 35 USC 102(b) be withdrawn.

Claim Rejections –35 USC §102(e)

Claims 1, 2 and 5 are rejected under 35 USC 102(e) as being anticipated by Devlin (US 7,101,715). This rejection is traversed on the basis that Devlin does not disclose operating a single clinical analyzer having two reagent servers.

Applicant respectfully suggests that Devlin discloses a method for operating an analytical analyzer system comprising a **pair of analyzers 10 and 11**, linked together by a sample rack shuttle **68**, in order to optimize throughput of the overall dual-analyzer system, regardless of the mix of assays to be performed (Col. 8, lines 34-37 and line 45).

Thus it cannot be said that Devlin anticipates Claim 1 because Devlin does not teach duplicating reagents required to conduct certain assays within the two servers of a single analyzer as is claimed by applicant. Devlin therefore fails to teach every aspect of the claimed invention either explicitly or impliedly.

Applicant therefore submits that the outstanding rejection under 35 USC 102(e) as being anticipated by Devlin is unjustified and respectfully requests that the rejection of Claim 1 be withdrawn.

With regard to the rejection of claims 2 and 5 under 35 USC 102(e), since independent claim 1 patentably distinguishes over Devlin and is allowable, claims 2 and 5 are at least allowable therewith because they depend from an allowable base claim. Consequently, the Examiner is requested to withdraw the rejections of claims 2 and 5 under 35 USC 102(e).

Claims 3 and 4 are rejected under 35 USC 102(e) as being anticipated by or, in the alternative, under 35 USC 103(a) as being obvious over Devlin (US 7,101,715).

With regard to the rejection of claims 3 and 4 under 35 USC 102(e), since independent claim 1 patentably distinguishes over Devlin and is allowable, claims 3 and 4 are at least allowable therewith because they depend from an allowable base claim. Consequently, the Examiner is requested to withdraw the rejections of claims 3 and 4 under 35 USC 102(e).

Claim Rejections –35 USC §103

Claims 2-4 are rejected under 35 USC 103(a) as being unpatentable over Bell as applied to claim 1. This rejection is traversed on the basis that Bell does not disclose a single clinical analyzer having two servers.

Regarding claim 2, the Examiner suggests that “Bell is capable of performing multiple assays using the **multiple** (reagent) servers found in Bell.” As explained above, Bell has only a single reagent server, so that a *prima facie* case of obviousness cannot be established. It is respectfully requested that the rejection of claim 2 under 35 USC 103(a) as being obvious over Bell be withdrawn.

With regard to the rejection of claims 3 and 4 under 35 USC 103(a), since claim 2 patentably distinguishes over Bell and is allowable, claims 3 and 4 are at least allowable therewith because they depend from an allowable claim. Consequently, the Examiner is requested to withdraw the rejection of claims 3 and 4 under 35 USC 103(a).

Conclusion

Applicant believes that this application contains patentable subject matter and that the foregoing explanation provides a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant’s representative at the number provided below.

Respectfully submitted,



Leland K. Jordan
Registration No. 36,560
Agent for Applicant

Siemens Healthcare Diagnostics
1717 Deerfield Road
P. O. Box 778
Deerfield, IL 60015-778
(847) 267-5365